

ASSEMBLY BILL

No. 1104

**Introduced by Assembly Member Rodriguez
(Principal coauthor: Assembly Member Irwin)**

February 27, 2015

An act to amend Section 1524 of the Penal Code, relating to search warrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 1104, as introduced, Rodriguez. Search warrants.

Existing law provides that a search warrant may only be issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. Existing law also states the grounds upon which a search warrant may be issued, including, among other grounds, when the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony, or when there is a warrant to arrest a person.

This bill would authorize the issuance of a search warrant on the grounds that the property or things to be seized consist of an item or constitute evidence that tends to show a violation of specified crimes, including shoplifting, fraud, petty theft, receipt of stolen goods, and possession of a controlled substance, or tends to show that a particular person has committed one of those crimes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1524 of the Penal Code, as amended by Section 1 of Chapter 872 of the Statutes of 2014, is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(8) When the property or things to be seized include an item or any evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.

(9) When the property or things to be seized include a firearm or any other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection

1 with, a domestic violence incident involving a threat to human life
2 or a physical assault as provided in Section 18250. This section
3 does not affect warrantless seizures otherwise authorized by Section
4 18250.

5 (10) When the property or things to be seized include a firearm
6 or any other deadly weapon that is owned by, or in the possession
7 of, or in the custody or control of, a person described in subdivision
8 (a) of Section 8102 of the Welfare and Institutions Code.

9 (11) When the property or things to be seized include a firearm
10 that is owned by, or in the possession of, or in the custody or
11 control of, a person who is subject to the prohibitions regarding
12 firearms pursuant to Section 6389 of the Family Code, if a
13 prohibited firearm is possessed, owned, in the custody of, or
14 controlled by a person against whom a protective order has been
15 issued pursuant to Section 6218 of the Family Code, the person
16 has been lawfully served with that order, and the person has failed
17 to relinquish the firearm as required by law.

18 (12) When the information to be received from the use of a
19 tracking device constitutes evidence that tends to show that either
20 a felony, a misdemeanor violation of the Fish and Game Code, or
21 a misdemeanor violation of the Public Resources Code has been
22 committed or is being committed, tends to show that a particular
23 person has committed a felony, a misdemeanor violation of the
24 Fish and Game Code, or a misdemeanor violation of the Public
25 Resources Code, or is committing a felony, a misdemeanor
26 violation of the Fish and Game Code, or a misdemeanor violation
27 of the Public Resources Code, or will assist in locating an
28 individual who has committed or is committing a felony, a
29 misdemeanor violation of the Fish and Game Code, or a
30 misdemeanor violation of the Public Resources Code. A tracking
31 device search warrant issued pursuant to this paragraph shall be
32 executed in a manner meeting the requirements specified in
33 subdivision (b) of Section 1534.

34 (13) When a sample of the blood of a person constitutes
35 evidence that tends to show a violation of Section 23140, 23152,
36 or 23153 of the Vehicle Code and the person from whom the
37 sample is being sought has refused an officer's request to submit
38 to, or has failed to complete, a blood test as required by Section
39 23612 of the Vehicle Code, and the sample will be drawn from
40 the person in a reasonable, medically approved manner. This

1 paragraph is not intended to abrogate a court's mandate to
2 determine the propriety of the issuance of a search warrant on a
3 case-by-case basis.

4 (14) Beginning January 1, 2016, the property or things to be
5 seized are firearms or ammunition or both that are owned by, in
6 the possession of, or in the custody or control of a person who is
7 the subject of a gun violence restraining order that has been issued
8 pursuant to Division 3.2 (commencing with Section 18100) of
9 Title 2 of Part 6, if a prohibited firearm or ammunition or both is
10 possessed, owned, in the custody of, or controlled by a person
11 against whom a gun violence restraining order has been issued,
12 the person has been lawfully served with that order, and the person
13 has failed to relinquish the firearm as required by law.

14 (15) *When the property or things to be seized consist of an item*
15 *or constitute evidence that tends to show a violation of any of the*
16 *following, or tends to show that a particular person has committed*
17 *any of the following:*

18 (A) *Shoplifting, as provided in Section 459.5.*

19 (B) *Forgery, as provided in Section 473 or 476a.*

20 (C) *Petty theft, as provided in Section 490.2.*

21 (D) *Offenses related to stolen property, as provided in Section*
22 *496.*

23 (E) *Possession of a controlled substance, as provided in Section*
24 *11350, 11357, or 11377 of the Health and Safety Code.*

25 (b) The property, things, person, or persons described in
26 subdivision (a) may be taken on the warrant from any place, or
27 from any person in whose possession the property or things may
28 be.

29 (c) Notwithstanding subdivision (a) or (b), no search warrant
30 shall issue for any documentary evidence in the possession or
31 under the control of any person who is a lawyer as defined in
32 Section 950 of the Evidence Code, a physician as defined in Section
33 990 of the Evidence Code, a psychotherapist as defined in Section
34 1010 of the Evidence Code, or a member of the clergy as defined
35 in Section 1030 of the Evidence Code, and who is not reasonably
36 suspected of engaging or having engaged in criminal activity
37 related to the documentary evidence for which a warrant is
38 requested unless the following procedure has been complied with:

39 (1) At the time of the issuance of the warrant, the court shall
40 appoint a special master in accordance with subdivision (d) to

1 accompany the person who will serve the warrant. Upon service
2 of the warrant, the special master shall inform the party served of
3 the specific items being sought and that the party shall have the
4 opportunity to provide the items requested. If the party, in the
5 judgment of the special master, fails to provide the items requested,
6 the special master shall conduct a search for the items in the areas
7 indicated in the search warrant.

8 (2) (A) If the party who has been served states that an item or
9 items should not be disclosed, they shall be sealed by the special
10 master and taken to court for a hearing.

11 (B) At the hearing, the party searched shall be entitled to raise
12 any issues that may be raised pursuant to Section 1538.5 as well
13 as a claim that the item or items are privileged, as provided by
14 law. The hearing shall be held in the superior court. The court shall
15 provide sufficient time for the parties to obtain counsel and make
16 any motions or present any evidence. The hearing shall be held
17 within three days of the service of the warrant unless the court
18 makes a finding that the expedited hearing is impracticable. In that
19 case the matter shall be heard at the earliest possible time.

20 (C) If an item or items are taken to court for a hearing, any
21 limitations of time prescribed in Chapter 2 (commencing with
22 Section 799) of Title 3 of Part 2 shall be tolled from the time of
23 the seizure until the final conclusion of the hearing, including any
24 associated writ or appellate proceedings.

25 (3) The warrant shall, whenever practicable, be served during
26 normal business hours. In addition, the warrant shall be served
27 upon a party who appears to have possession or control of the
28 items sought. If, after reasonable efforts, the party serving the
29 warrant is unable to locate the person, the special master shall seal
30 and return to the court, for determination by the court, any item
31 that appears to be privileged as provided by law.

32 (d) (1) As used in this section, a “special master” is an attorney
33 who is a member in good standing of the California State Bar and
34 who has been selected from a list of qualified attorneys that is
35 maintained by the State Bar particularly for the purposes of
36 conducting the searches described in this section. These attorneys
37 shall serve without compensation. A special master shall be
38 considered a public employee, and the governmental entity that
39 caused the search warrant to be issued shall be considered the
40 employer of the special master and the applicable public entity,

1 for purposes of Division 3.6 (commencing with Section 810) of
2 Title 1 of the Government Code, relating to claims and actions
3 against public entities and public employees. In selecting the
4 special master, the court shall make every reasonable effort to
5 ensure that the person selected has no relationship with any of the
6 parties involved in the pending matter. Any information obtained
7 by the special master shall be confidential and may not be divulged
8 except in direct response to inquiry by the court.

9 (2) In any case in which the magistrate determines that, after
10 reasonable efforts have been made to obtain a special master, a
11 special master is not available and would not be available within
12 a reasonable period of time, the magistrate may direct the party
13 seeking the order to conduct the search in the manner described
14 in this section in lieu of the special master.

15 (e) Any search conducted pursuant to this section by a special
16 master may be conducted in a manner that permits the party serving
17 the warrant or his or her designee to accompany the special master
18 as he or she conducts his or her search. However, that party or his
19 or her designee may not participate in the search nor shall he or
20 she examine any of the items being searched by the special master
21 except upon agreement of the party upon whom the warrant has
22 been served.

23 (f) As used in this section, “documentary evidence” includes,
24 but is not limited to, writings, documents, blueprints, drawings,
25 photographs, computer printouts, microfilms, X-rays, files,
26 diagrams, ledgers, books, tapes, audio and video recordings, films,
27 and papers of any type or description.

28 (g) No warrant shall issue for any item or items described in
29 Section 1070 of the Evidence Code.

30 (h) Notwithstanding any other law, no claim of attorney work
31 product as described in Chapter 4 (commencing with Section
32 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
33 be sustained where there is probable cause to believe that the
34 lawyer is engaging or has engaged in criminal activity related to
35 the documentary evidence for which a warrant is requested unless
36 it is established at the hearing with respect to the documentary
37 evidence seized under the warrant that the services of the lawyer
38 were not sought or obtained to enable or aid anyone to commit or
39 plan to commit a crime or a fraud.

1 (i) Nothing in this section is intended to limit an attorney's
2 ability to request an in camera hearing pursuant to the holding of
3 the Supreme Court of California in *People v. Superior Court (Laff)*
4 (2001) 25 Cal.4th 703.

5 (j) In addition to any other circumstance permitting a magistrate
6 to issue a warrant for a person or property in another county, when
7 the property or things to be seized consist of any item or constitute
8 any evidence that tends to show a violation of Section 530.5, the
9 magistrate may issue a warrant to search a person or property
10 located in another county if the person whose identifying
11 information was taken or used resides in the same county as the
12 issuing court.

13 (k) This section shall not be construed to create a cause of action
14 against any foreign or California corporation, its officers,
15 employees, agents, or other specified persons for providing location
16 information.